

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PHL VARIABLE INSURANCE
COMPANY,

Plaintiff,

-against-

MICHAEL T. BIMBO

Defendant.

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MEMORANDUM AND ORDER
Case No. 17-CV-1290 (FB) (ST)

BLOCK, Senior District Judge:

Magistrate Judge Tiscione issued a Report and Recommendation (“R&R”) recommending that Plaintiff’s Motion for Default Judgment be granted in part. Specifically, the R&R recommended that “Plaintiff should receive a declaration that the insurance policy issued to Defendant is void *ab initio*” and that Plaintiff should be granted leave “to deposit the premiums paid with the clerk of the court,” but that plaintiff should not receive attorney’s fees or costs. R&R at 7. The R&R advised that objections were due within 14 days from service of the R&R and warned that “[f]ailure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals.” R&R at 7. The R&R was served on the defendant at his last known address on September 13, 2018, making objections due by September 27, 2018. To date, no objections have

been filed.

Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without de novo review. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will, however, excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Therefore, the Court adopts it without de novo review. Accordingly, the Clerk shall enter a judgment declaring the policy void and authorizing PHL to deposit the premiums paid with the Clerk’s office.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
September 28, 2018